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House Bill _____
By _____

Senate No. SB1714
By Gilbert

AN ACT to amend Tennessee Code Annotated, relative to drivers' licenses, so as to require the issuance of drivers' licenses, commercial drivers' licenses, permits, and identification cards with magnetic reader strips; to provide for criminal records checks; to create a computerized list of felons and persons adjudicated mentally incompetent; to provide for confidentiality of the criminal information, to provide a means for correcting erroneous information; to provide for the safety of police officers; to provide for duties of licensed firearms dealers; to prohibit certain actions by prohibited persons; to provide for seizing a license upon one's becoming a prohibited person; to provide for funding of records checks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as the "Felon Identification and Police Safety Act".

SECTION 2. The legislature finds the following:

(a) State laws requiring a waiting period before the purchase of a firearm have endangered the lives of law-abiding Americans by preventing them from protecting themselves, as demonstrated by the following examples:

(1) In 1991, Bonnie Elmasri of Wisconsin sought to get a handgun to protect herself from her estranged husband, but he returned home and killed her and her two (2) children before the forty-eight (48) hour waiting period required by state law had expired.

(2) In 1990, Catherine Latta of North Carolina tried to buy a firearm but was told by police that it would take her two (2) to four (4) weeks to get the necessary permit. After telling the clerk she “would be dead by then”, she illegally bought a handgun on the street. Five (5) hours later she was attacked again by the man who had already robbed, assaulted, and raped her. She used her handgun to protect herself by shooting and killing him. Had she not had a handgun, the outcome would have been much different.

(3) Residents of Los Angeles were forced to wait fifteen (15) days during the 1992 riots before they could legally buy a firearm for protection, in spite of the fact that police were admitting that they could not protect the people.

(b) A point-of-sale instant background check can easily lead to a gun owner registration system. Commenting on the Virginia State instant check system, the Congressional Office of Technology Assessment said in 1991 that, “The Virginia transaction log does not include the names of firearm purchasers, but the potential exists regardless of legal prohibitions”. Likewise, a Justice Department Task Force stated in 1989 that, “Any system that requires a criminal history record check prior to purchase of a firearm creates the potential for the automated tracking of individuals who seek to purchase firearms”.

(c) Laws requiring a waiting period before the purchase of a firearm have not prevented crime rates in various states that have enacted such laws from increasing far above the national average increase in crime rates.

(d) Police cannot protect, and are not legally responsible for protecting, individual citizens, as evidenced by the following:

(1) The courts have consistently ruled that the police do not have an obligation to protect individuals, only the public in general. In *Warren v. District of Columbia Metropolitan Police Department* (D.C.App.444A.2d1(1981), the court stated “courts have without exception concluded that when a municipality or other governmental entity undertakes to furnish police services, it assumes a duty only to the public at large and not to individual members of the community”.

(2) Former Florida Attorney General Jim Smith told Florida legislators that police responded to only 200,000 of 700,000 calls for help to Dade County authorities.

(3) The department of justice found that in 1989, there were 168,881 crimes of violence which were not responded to by police within one (1) hour.

(4) Currently, there are about 150,000 police officers on duty to protect a population of more than 250,000,000 Americans.

SECTION 3.

(a) Prior to the issuance, reissuance, or reinstatement of any license issued by the department of safety (hereafter referred to as “Department”), it shall be the duty of the department to conduct a criminal records check of the applicant and to determine, from records furnished to the department pursuant to subsections (b) and (c), whether the applicant has previously been convicted of a felony or adjudicated mentally incompetent, without having waited five (5) years from the date of their restoration to capacity by court order. If it is determined that the applicant has been convicted of any felony under laws of this state, the United States, or any other state of the United States or has previously been adjudicated mentally incompetent, without having waited five (5) years from the date of their restoration to capacity by court order, or is for any other reason prohibited from purchasing a firearm by state or federal law, the license issued by the department shall have on its magnetic reader strip indication of such conviction or adjudication. Said indication shall contain no other personal information except as

provided by law. Said indication shall only be determined through the use of the special magnetic code reader, and will not appear different to the unaided eye from that of a non-prohibited person. Said magnetic code reader shall be a device which is read only and which does not have storage or communication capabilities. The magnetic code reader shall provide a red or a green light signal. The red light will indicate the buyer is a prohibited purchaser pursuant to this subsection; the green light will indicate the buyer is not a prohibited person pursuant to this subsection. The department shall provide a magnetic code reader in its offices to ensure the license reads correctly.

(b) The Tennessee Highway Patrol shall create a computerized list of felons' names pursuant to Title I, Sec. 103(a) of the Brady Handgun Violence Prevention Act which shall be made available to the department in such manner as to conceal the nature of the offenses. This list shall also contain the names of persons prohibited from purchasing a firearm by state or federal law. The Tennessee Highway Patrol shall achieve, by the end of two (2) years after the date of enactment of this act, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last five (5) years and continue to maintain such a system.

(c) The Tennessee Highway Patrol, pursuant to subsection (b), shall add to the computerized list the names of persons who have been adjudicated mentally incompetent and have not waited five (5) years from the date of their restoration to capacity by court order. This list of names shall be made available to the department in such manner as to conceal the nature of the offenses.

(d) If records established under this section identify a person as a prohibited person pursuant to subsection (a), such person, if he believes such identification to be erroneous, he may request the Tennessee Highway Patrol to supply such person with the reasons therefore. Within five (5) days after receipt of such a request, the Tennessee Highway Patrol shall comply with the request. Such person may submit to

the Tennessee Highway Patrol information which may correct, clarify, or supplement the records with respect to such person. Within five (5) days after receipt of such information, the Tennessee Highway Patrol shall consider such information, investigate the matter further, and correct all erroneous records relating to such person and notify any agency that was the source of such erroneous records of such errors.

(e) Any person erroneously identified as a prohibited person, whose records have not been corrected, pursuant to subsection (a) may bring an action in any court of original jurisdiction against the state of Tennessee or any political subdivision thereof which is the source of the erroneous information, for damages (including consequential damages), injunctive relief, and such other relief as the court deems appropriate. If the person prevails in the action, the court shall allow the person a reasonable attorney's fee as part of the costs.

(f) In performing his or her duties at a traffic stop, a police officer may utilize the designated magnetic code reader.

SECTION 4.

(a) It shall be unlawful for any federally licensed firearms dealer to knowingly and intentionally:

(1) Sell a handgun to any person not licensed under Section 923 and Title 18, United States Code, unless the firearms dealer has used a magnetic code reader described in Section 3(a) to read the magnetic strip affixed to a license issued to the person by the department; or

(2) Refuse to notify local law enforcement authorities, within seventy-two (72) hours, of any person attempting to purchase a handgun who is identified as a prohibited person through the use of such a device.

(b) Any firearms dealer who violates subsection (a)(1) shall be imprisoned not more than one (1) year, fined not more than \$1,000 or both. Any firearms dealer who violates subsection (a)(2) shall be subject to a civil penalty of not more than \$500.

(c) Subsections (a) and (b) shall not take effect until three (3) months after the department is in full compliance with the aforementioned background check and magnetic strip and reader system.

(d) A firearms dealer shall run an applicant's license through the magnetic code reader after the applicant fills out the federal 4473 form. However, this shall not prevent the applicant before filling out the 4473 form, from first testing the magnetic code reader himself to ensure the accuracy of the license and magnetic code reader.

(e) A "license" which is issued by the department and which does not identify a person as a prohibited purchaser shall be considered a "permit" pursuant to Title I, Section 102(a)(1)(C) of the Brady Handgun Violence Prevention ct. The department shall reissue such licenses no later than every five (5) years.

(f) It shall be unlawful for any prohibited person pursuant to Section 3(a) to knowingly and intentionally alter, change, modify, or counterfeit a Tennessee license issued pursuant to this chapter. Any such prohibited person violating the provisions of this subsection shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one (1) year nor more than ten (10) years or by a fine not to exceed \$25,000.00, or both.

(g) Upon becoming a prohibited person pursuant to Section 3(a), a person's license shall be void and shall be seized by the trial court. A new license shall, if desired by the prohibited person, be issued by the department with the new prohibition encoded on the magnetic strip.

(h) The state may issue a report to firearms dealers as often as bi-monthly. Said report may include the names of persons:

(1) Who have outstanding warrants issued against them;

(2) Who are prohibited persons pursuant to Section 3(a) who failed to turn in their licenses upon conviction; and

(3) Who have been convicted of offenses pursuant to Section 3(a) in other states. The names in this report shall be listed in such manner as to conceal the nature of the offenses. When issued, the report shall be sent by certified mail. Any firearms dealer who knowingly and intentionally sells a handgun to a person listed in the most recent report shall be imprisoned not more than one (1) year, fined not more than \$1,000, or both; and/or shall be guilty of a civil penalty of not more than \$500 for refusing to notify local law enforcement authorities within seventy-two (72) hours of the attempted purchase of a handgun by someone listed in this report.

(I) All prohibited persons, pursuant to Section 3(a), shall pay additional court costs upon being adjudicated as prohibited persons and shall pay additional fees to the department when obtaining a license, sufficient to cover the expenses of the criminal records checks conducted pursuant to Section 3(a).

(J) Three (3) months after the department is in full compliance with the aforementioned background check and magnetic strip and reader system, the system of identifying prohibited persons before the purchase of a handgun as described in this act shall be the only system used in this state for identifying prohibited persons before the purchase of a firearm. All laws and parts of laws in conflict with this act are then null and void.

SECTION 5.

(a) "Firearms dealer" means any person licensed as a dealer pursuant to 18 U.S.C. Sec. 921 et seq.

(b) "Engaged in business" means as applied to firearms dealer a person, firm partnership, or corporation that devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through repetitive purchase or resale of firearm, but such term shall not involve a person who makes occasional sales, exchanges, or purchases of firearms for the

enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.

(c) "Handgun" means any firearm which has a short stock and is designed to be held and fired by the use of a single hand.

(d) "License" means a license or permit to operate a motor vehicle on the roads and highways of the state, and any identification document issued by the department solely for purposes of identification.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.